

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**vs.**

**REGIONAL CENTER OF THE EAST BAY, Service Agency.**

**DDS No. CS0007286**

**OAH No. 2023060720**

**DECISION**

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, heard this matter on July 20, 2023, by videoconference.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay, the service agency.

Claimant was represented by his father. Claimant was not present at the hearing.

The record closed and the matter was submitted for decision on July 20, 2023.

## **ISSUE**

Must the Regional Center of the East Bay (RCEB) allow claimant to use his Self-Determination Program (SDP) individual budget to purchase an iPad digital tablet and an iWatch?<sup>1</sup>

## **FACTUAL FINDINGS**

1. Claimant is 10 years old and is eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) for services from RCEB because he is substantially disabled by autism spectrum disorder. There is no dispute between the parties that claimant exhibits eloping (also referenced as “wandering”), difficulties in self-regulation and communication, and behavioral rigidity such that he would benefit from receiving applied behavior analysis (ABA) therapy.

2. Claimant received ABA therapy in the past. He is not currently receiving ABA therapy, although, the parties are actively working to reestablish it for claimant. Claimant currently has a Medic Alert bracelet that he wears, and a one-year Medic Alert membership for the purpose of obtaining assistance if he is found after eloping.

---

<sup>1</sup> The June 14, 2023, Notice of Action references an “iWatch,” but the correct term is “Apple Watch,” which shall be used in this decision.

3. Claimant's most recent Individual Program Plan (IPP) was developed by the parties on September 1, 2022, and amended with addenda on April 21, 2023, and July 17, 2023.

4. Claimant participates in the Self-Determination Program (SDP), provided under the Lanterman Act. Under SDP, the consumer directs spending from an individual budget that represents the amount of regional center purchase of service funding available to the participant for purchase of services and supports necessary to implement the participant's IPP. (Welf. & Inst. Code, § 4685.8.)

5. The parties have agreed on the amount of \$33,581.16 for claimant's SDP annual individual budget. The disagreement between the parties is whether claimant's SDP individual budget may be used to purchase an iPad digital tablet and an Apple Watch, which together cost approximately \$2,000.

6. Claimant's parents have expressed that claimant requires an Apple Watch to track him and to ensure that his location can be found as soon as possible if he elopes or wanders. Claimant's parents have also expressed that claimant requires an iPad because he has highly rigid behavioral sensitivities that easily can trigger "meltdowns," and allowing him access to an iPad reduces or eliminates these behavioral meltdowns. Claimant's parents currently use an older version of an iPad with him in the home and in the community because it is a preferred activity for claimant. Claimant is seeking to purchase a new, updated iPad, and to keep the "old" iPad in reserve.

7. On June 14, 2023, RCEB Case Manager Wing-Yip "Karen" Cheung wrote a letter to claimant's mother confirming the outcome of a June 2, 2023, meeting. In that meeting, claimant's mother asked to use claimant's SDP individual budget to purchase

an iPad and Apple Watch for claimant, but RCEB denied that request. A Notice of Action denying the request accompanied Cheung's letter.

8. On June 19, 2023, claimant filed an appeal.

9. On June 27, 2023, Brian G. Tang, M.D., Developmental-Behavioral Pediatrician, wrote a letter supporting claimant's purchase of the two devices with the reasoning discussed in Factual Finding 6. Dr. Tang further expressed in his letter that the two devices will "enhance [claimant]'s opportunities for community integration and improve his functional capabilities" and are "crucial for [claimant]'s safety and well-being."

10. Cheung, RCEB supervisor Miu Wan Young, and RCEB Federal Program Supervisor Jennifer Castañeda all testified at hearing in a credible and persuasive manner consistent with documentary evidence. The position of RCEB is that because RCEB first must complete an assessment to support the appropriateness of the two devices for claimant, his request to use his SDP individual budget to fund the purchase of the two devices was premature. Providing the two devices without assessment could result in negative outcomes such as creating dependence on the devices and reinforcing claimant's maladaptive behaviors. If RCEB's assessment supported the appropriateness of the use of the two devices with claimant, RCEB would agree to allow the purchase of the devices from his SDP individual budget.

The assessment by RCEB could occur through a review of claimant's complete Individualized Education Program (IEP) from claimant's school district, consultation with claimant's ABA therapy provider, and/or review by the RCEB clinical team. The purpose of the assessment is to ensure that use of the two devices with claimant is appropriate, because using technology to address behavioral issues should be "a last

resort” and using ABA therapy or other behavioral interventions is preferred. Furthermore, using a device to track claimant is a very restrictive and intrusive intervention.

11. The three assessment options identified by RCEB are:

- Review of claimant’s IEP

To complete the assessment, RCEB staff requested a complete copy of claimant’s current IEP. Claimant’s parents chose to provide only two pages of claimant’s IEP, which listed the services provided to him by his school district but did not include his present levels of performance, the basis for the services, or a behavior intervention plan. Because the complete current IEP was not provided to RCEB, RCEB could not use the IEP to complete the assessment.

- ABA Therapy

RCEB could also use a report or other information from a current provider of ABA therapy to claimant to complete the assessment. However, claimant is not currently receiving ABA therapy due to a change in claimant’s parents’ insurance, causing claimant to be on a waiting list for insurance-eligible ABA therapy providers. RCEB staff have asked claimant’s parents to authorize a written release and exchange of information form permitting RCEB to contact potential ABA therapy providers directly and advocate for services for claimant; however, claimant’s parents have declined to authorize the release form. Claimant’s parents have agreed to participate in a three-way telephone call (RCEB, claimant’s parents, and potential ABA therapy provider(s)) and the parties are working together in good faith to schedule the telephone call(s). As of the date of the hearing, no three-way telephone calls had occurred.

- RCEB Clinical Team

A third option to complete the assessment is for claimant's parents to participate in a RCEB clinical team meeting so that relevant information regarding claimant can be exchanged and discussed. The parties are working together in good faith to schedule a RCEB clinical team meeting where both of claimant's parents could participate. As of the date of the hearing, no clinical team meeting had occurred.

12. Claimant's parents both testified at hearing in a sincere manner regarding the concerns they have for their son: that an iPad and Apple Watch are currently necessary for claimant's safety, the devices will allow him increased opportunities for community integration, and the devices will help address his meltdowns and other behavioral issues. They expressed understanding that long-term ABA therapy is the preferred method to address claimant's needs, but as an interim measure, the two devices are necessary for claimant and RCEB should allow purchase of the devices from claimant's SDP individual budget.

13. RCEB staff and claimant's parents expressed their appreciation of the other party and the shared desire to work together to address the needs of claimant.

14. The evidence established the need for an assessment conducted by RCEB to determine the appropriateness of the use of an iPad and Apple Watch with claimant before RCEB may authorize purchase of these devices from claimant's SDP individual budget.

## LEGAL CONCLUSIONS

1. The Lanterman Act entitles claimant to an administrative fair hearing to review RCEB's service decisions. (Welf. & Inst. Code, § 4710 et seq.) Claimant bears the burden in this matter to prove that the Lanterman Act requires RCEB to alter its services in the manner he requests. The standard of proof required is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (Welf. & Inst. Code, § 4646.) The IPP planning process requires "gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems" of the consumer." (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (Welf. & Inst. Code, §§ 4646, 4646.5 & 4648.) In addition, services and supports should be provided in the least restrictive environment that will "foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible," and "services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports." (Welf. & Inst. Code, § 4502, subd. (b)(1).)

3. As determined in Factual Finding 14, the evidence established that RCEB must assess the appropriateness of an iPad and Apple Watch for claimant before

authorizing him to purchase the devices from his SDP individual budget. Without an assessment, claimant's use of the two devices may create dependence on the devices and reinforce his maladaptive behaviors. Furthermore, RCEB has a duty to ensure that services and supports are provided in the least restrictive environment. While use of an Apple Watch and the associated tracking feature may ultimately be determined to be the least restrictive environment for claimant, sufficient assessment has not yet occurred at this time. RCEB has proposed three assessment methods to make this determination. Claimant's request to use his SDP individual budget to purchase an iPad and Apple Watch is premature until RCEB completes its assessment.

## **ORDER**

Claimant's appeal is denied.

DATE:

CARL D. CORBIN

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.



BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023060720

Vs.

**DECISION BY THE DIRECTOR**

Regional Center of the Easy Bay,  
Respondent.

ORDER OF DECISION

On July 26, 2023, the Office of Administrative Hearings (OAH) issued this Self Determination Program (SDP) ruling as a Final Decision and served all parties. The decision should have been a proposed decision, subject to review by the Director of the Department of Developmental Services (DDS) pursuant to Welfare & Institutions Code section 4712.5, subdivision (e)(1).

DDS therefore takes the following action on the attached Decision of the ALJ:

The Decision is adopted by DDS as its Decision in this matter. This Order of Decision, together with the Decision of the ALJ, constitute the Final Administrative Decision in this matter.

This is the Final Administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving this Order and Decision, or may appeal the Decision to a court of competent jurisdiction within 180 days of receiving this Order and the final Decision.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_.

---

Nancy Bargmann, Director